



THE ATTORNEY GENERAL
OF TEXAS

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December 6, 1976

The Honorable Wayne Peveto
Chairman
Property Tax Study Committee
Texas Legislative Council
P. O. Box 12128, Capitol Station
Austin, Texas 78711

Letter Advisory No.117

Re: Constitutionality
of a proposal to establish
regional appraisal offices.

Dear Mr. Peveto:

You have requested our opinion regarding the constitutionality of a proposal to establish regional offices throughout the State with responsibility for appraising property for ad valorem tax purposes. You first inquire whether the use of the term "assess" in article 8, section 14, and article 11, section 5, of the Texas Constitution, includes the appraisal of property as well as a determination of the amount of tax to be imposed.

Article 8, section 14 of the Texas Constitution directs that the Assessor and Collector of Taxes elected by the qualified voters of each county

shall perform all the duties with respect to assessing property for the purpose of taxation and of collecting taxes, as may be prescribed by the Legislature.

Likewise, article 11, section 5, permits home rule cities to

levy, assess and collect such taxes as may be authorized by law or by their charters.

In our opinion, however, "assess" as used in these two sections must be deemed to include within its scope the appraisal of property. The term frequently is not used with precision, and, from a cursory reading of such cases as Whelan v. State, 282 S.W.2d 378, 382 (Tex. Sup. 1955), one might conclude that the courts recognize a distinction.

Where the concept of "assessment" has been considered at greater length, however, it is clear that "assess" includes "appraise." In Crocker v. Santo Consolidated Independent School District, 116 S.W.2d 750 (Tex. Civ. App. --Eastland 1938, writ dismiss'd), the court quoted the early case of George v. Dean, 47 Tex. 73 (1877):

To make an assessment, the officer or tribunal to whom the duty is committed, is required to ascertain and make an inventory or list of the property upon which the tax has been levied, and to estimate or determine its value. 116 S.W.2d at 755.

In Greyhound Lines, Inc. v. Board of Equalization, 419 S.W.2d 345 (Tex. Sup. 1967), the Supreme Court strongly implied that it intended to equate "assess" with "appraise":

[I]t was the duty of the city tax assessor to assess Greyhound rolling stock [I]t was also his duty to make the assessment of the rolling stock at its 'true and full value'
Id. at 351.

Thus, it is our opinion that the use of the term "assess" in article 8, section 14 and article 11, section 5 of the Texas Constitution includes the appraisal of property as well as a determination of the amount of tax to be imposed.

You also ask whether the Legislature may, under article 8, section 14 of the Texas Constitution, vest the appraisal function of the county tax assessor-collector in an office independent of the assessor-collector or, alternatively, in a division within the assessor-collector's office administered by a person whose appointment and removal would be subject to approval by an independent board responsible for property appraisals. In response to this question we must initially note that the county tax assessor-collector is vested with two types of duties -- those conferred by the Constitution, and those authorized by statute. Article 8, section 14 of the Constitution directs the assessor-collector to perform all the duties with respect to assessing property for taxation, as may be prescribed by the Legislature. In

Attorney General Opinion M-70 (1967), this office stated that the assessor-collector cannot constitutionally be "entirely eliminate[d]" from the appraisal and assessment of property for taxation. That view was reaffirmed in Attorney General Opinion M-986 (1971), in which this office indicated that a county may not contract away the constitutional duty of the county tax assessor-collector to assess property.

We likewise believe that the county tax assessor-collector may not constitutionally be entirely eliminated from a role in the assessment of property for purposes of county taxation. An absolute transfer of the duty to assess property for the purpose of county taxation from the county tax assessor-collector to an office independent of his control or to a division of his office over which he did not maintain effective control would involve a "constitutional grant of all powers to the . . . [assessor-collector] and a legislative grant of like powers to others." Green v. Stewart, 516 S.W.2d 133, 136 (Tex. Sup. 1974). In view of the language of the Supreme Court in Green v. Stewart, supra, and of Attorney General Opinions M-70 and M-986, we cannot say that the duties of the assessor-collector with regard to the assessment of property for county taxation can be transferred to another individual without amendment of the Constitution.

In addition to these constitutional duties, however, county tax assessor-collectors have also been authorized by statute to perform services for other political subdivisions. An independent school district may designate the county tax assessor-collector as its assessor and collector of taxes under section 23.94 of the Education Code. See Jackson v. Maypearl Independent School District, 392 S.W.2d 892 (Tex. Civ. App. -- Waco 1965, no writ). Cities, towns, villages and various districts may likewise authorize the county tax assessor-collector to act as assessor and collector of taxes for those subdivisions. V.T.C.S. art. 1042b; Water Code § 51.595 et seq. The offices of assessor-collector of taxes for separate taxing bodies are separate and distinct. Pruitt v. Glen Rose Independent School District, 84 S.W.2d 1004 (Tex. Sup. 1935); Odem v. Sinton Independent School District, 234 S.W. 1090 (Tex. Comm'n App. 1921, jdgmt adopted). The county tax assessor-collector would apparently be barred by article 16, section 40 of the Texas Constitution from acting

as the assessor-collector of taxes for subdivisions other than counties, absent the statutory expansion of his duties. See Lancaster Independent School District v. Pinson, 510 S.W.2d 380 (Tex. Civ. App. -- Dallas 1974, writ ref'd n.r.e.); Jenkins v. Autry, 256 S.W. 672 (Tex. Civ. App. -- Amarillo 1923, writ ref'd).

The Legislature may, of course, eliminate or transfer those nonconstitutional functions which have been statutorily conferred upon the county tax assessor-collector. Article 8, section 14 of the Constitution presents no restriction upon the power of the Legislature to vest the duty of assessing property for taxation by subdivisions other than counties in an office independent of the county tax assessor-collector.

We also believe that article 11, section 5 of the Constitution empowers the Legislature to require home rule cities to use appraisals made by an office independent of city government. That constitutional provision permits cities to "levy, assess and collect such taxes as may be authorized by law or by their charters," but also provides that no city charter or ordinance "shall contain any provision inconsistent with . . . the general laws enacted by the Legislature. . . ." The Supreme Court has affirmed the authority of the Legislature to limit the broad powers granted home rule cities by the Constitution. City of Sweetwater v. Geron, 380 S.W.2d 550 (Tex. Sup. 1964).

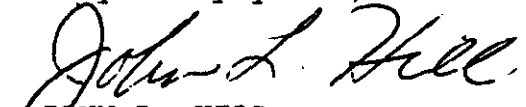
Finally, you ask if the Legislature may direct counties, cities, school districts and special taxing districts to appropriate funds to support the operations of an appraisal office over which they have no direct control. As previously discussed, we do not believe that the duty of the county tax assessor-collector to appraise property for county taxation may properly be transferred to such an appraisal office entirely independent of his control. The Legislature has broad powers, however, to provide for the assessment and collection of taxes by school districts, Tex. Const. art. 7, § 3, by cities and towns, Tex. Const. art. 11, §§ 4, 5, and by conservation and reclamation districts, Tex. Const. art. 16, § 59. We believe that the Legislature might constitutionally require those subdivisions to appropriate funds to support the operation of an appraisal office over which they have no direct control, but from which they derive a direct benefit.

Such a requirement that political subdivisions pay for services by agencies or offices over whom the subdivisions have no direct control but from which they derive benefit has precedent in our law. See V.T.C.S. arts. 200a, § 11(a), 5142c-1, § 1, 5142c-3. See also Code Crim. Proc. art. 42.12, § 10; Commissioners Court of Lubbock County v. Martin, 471 S.W.2d 100 (Tex. Civ. App. -- Amarillo 1971, writ ref'd n.r.e.).

S U M M A R Y

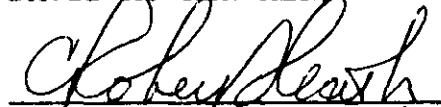
The term "assess" as used in article 8, section 14, and article 11, section 5, of the Texas Constitution includes the appraisal of property as well as a determination of the amount of tax to be imposed. The Legislature may not entirely eliminate the county tax assessor-collector from the appraisal of property for county taxation, but it may transfer or eliminate those nonconstitutional functions which have been statutorily conferred upon him relative to subdivisions other than counties. The Legislature may require, if it sees fit, home rule cities to use appraisals made by an office independent of city government, and may, if it sees fit, direct cities, school districts and special taxing districts to appropriate funds to support appraisal offices over which they have no direct control, but from which they derive benefit.

Very truly yours,


JOHN L. HILL
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APPROVED:


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